

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between California Communities Against Toxics ("CCAT") and Carlton Forge Works ("Carlton") (collectively, the "SETTLING PARTIES") with respect to the following facts and objectives:

RECITALS

WHEREAS, CCAT is an unincorporated non-profit association dedicated to working with communities to advocate for environmental justice and pollution prevention. Jane Williams is the Executive Director of CCAT;

WHEREAS, Carlton owns and operates an aerospace manufacturing facility located at 7743 Adams Street in Paramount, California (the "Facility"). The Facility is operated pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit"). A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about July 15, 2014, CCAT provided Carlton with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

WHEREAS, on October 2, 2014, CCAT filed its Complaint in the United States District Court for the Central District of California (*California Communities Against Toxics v. Carlton Forge Works*, Case No. 2:14-cv-07659-RGK-VBK). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, Carlton denies any and all of CCAT's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CCAT and Carlton, through their authorized representatives and without either adjudication of CCAT's claims or admission by Carlton of any alleged violation or other wrongdoing, have chosen to resolve in full CCAT's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CCAT and Carlton have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CCAT's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCAT and Carlton hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CCAT

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the Agency Approval Date, as defined in Paragraph 18 below, CCAT shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Central District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CCAT is dismissing all claims in CCAT's Complaint. Consistent with Paragraphs 24 and 25 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through the Termination Date, as defined in Paragraph 23 below, or through the conclusion of any proceeding to enforce this AGREEMENT, for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT.

COMMITMENTS OF CARLTON

3. **Compliance with General Permit.** Carlton agrees to operate the Facility in compliance with the applicable requirements of the Clean Water Act, the General Permit through

and including June 30, 2015, and beginning on July 1, 2015, the new version of the General Permit, State Water Resources Control Board Water Quality Order No.2014-0057-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001 ("2015 General Permit").

4. Implemented Storm Water Controls. Carlton shall maintain in good working order all storm water collection and treatment systems at the Facility currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures. This requirement does not mean that Carlton must maintain less effective controls if it upgrades its system to utilize more effective controls.

5. Additional Best Management Practices. Carlton shall implement the following structural best management practices ("BMPs") to improve the storm water pollution prevention measures at the Facility.

a. By January 1, 2015, Carlton shall implement filtration booms containing Filtrexx® Metals Agent (or equivalent) at each storm water discharge location at the Facility indicated on Exhibit C. These filters shall be weighted down or keyed into the ground to ensure maximum contact with all storm water discharged from the Facility.

b. By March 20, 2015, Carlton shall implement filtration on the three high-volume roof downspouts at the Facility utilizing MetalZorb® (or equivalent) filtration media. The placement of these downspouts is depicted on Exhibit C.

c. By January 1, 2015, Carlton shall create new storm water discharge sampling locations that will be subsequent to filtration boom areas and the one high-volume roof downspout that discharges to Somerset Blvd. These seven sampling locations are depicted on Exhibit C.

6. Additional Housekeeping. By April 15, 2015, Carlton shall conduct hard surface deep cleaning (with recovery) of the entire uncovered surface area of the Facility that can be reasonably accessed utilizing a machine manufactured by Cyclone Technology (or equivalent).

7. Monitoring. Carlton agrees to perform the monitoring described herein during the 2014-2015 wet season, and the 2015-2016 and 2016-2017 reporting years.

a. During the 2014-2015 wet season, the Facility shall sample and analyze storm water discharges at the locations identified in Exhibit C from four (4) qualifying storm events (to the extent that such events occur) that result in discharge consistent with the requirements and protocols set forth in the General Permit. If by February 15, 2015, the Facility has not sampled the required number of discharges, said Facility shall sample any storm events (between February 15 and May 30) that result in a discharge when the Facility is open and manufacturing operations are occurring until it meets the required number of sampling events.

b. During the 2015-2016 and 2016-2017 reporting years (July 1 – June 30), the Facility shall sample and analyze storm water discharges at the locations identified in Exhibit C from four (4) qualifying storm events (to the extent that such events occur) that result in discharge consistent with the requirements and protocols set forth in the 2015 General Permit.

c. The Facility shall analyze each storm water sample taken in accordance with the General Permit, the 2015 General Permit (when applicable), and this Agreement for, at a minimum, pH, total suspended solids, oil and grease, specific conductance (only during 2014-2015 wet season), aluminum, iron, and nitrate + nitrite as nitrogen.

d. Carlton shall conduct monthly visual observations in accordance with the General Permit, and the 2015 General Permit when applicable. During each inspection, Carlton shall photograph the storm water discharge locations at the Facility that are being sampled.

e. All photographs required by this AGREEMENT shall be in color and electronically formatted. Each photograph shall be identified by date, the person taking the photograph and the location of the feature being photographed. The title of each electronic photograph shall include, at a minimum, the date it was taken, and the location of the photographed area (for example, "2015.01.10 VERM C"). On or before October 1

of each year of this agreement, all photographs required by this AGREEMENT for the prior year shall be provided to CCAT upon request via compact disc(s).

8. Monitoring Results. Results from the Facility's sampling and analysis during the term of this AGREEMENT shall be provided to CCAT within thirty (30) days of receipt of the sampling results by Carlton or its counsel.

9. Subsequent BMPs Required Pursuant to Exceedances of Numeric Action Levels. Carlton shall compare the analytical results of all storm water samples taken from the Facility during the 2014-2015 wet season, and the 2015-2016 and 2016-2017 reporting years. If the average of the analytical results for a particular parameter indicates that storm water discharges from the Facility exceed the annual Numeric Action Levels ("NALs") (as set forth in the 2015 General Permit and for the 2015-2016 and 2016-2017 reporting years only) or if two or more analytical results from samples taken for any parameter within the 2015-2016 or 2016-2017 reporting year exceed the instantaneous maximum NAL, Carlton agrees to implement subsequent BMPs as follows:

a. Subsequent to the first reporting year where the average storm water sampling results exceed the annual NAL for a particular parameter or if two results exceed the instantaneous maximum NAL for O&G or TSS, by no later than by October 31 of that same year (e.g. October 31, 2016) subsequent to the 2015-2016 wet season after learning of the exceedance, Carlton shall install catch basins at those storm water sampling locations where the parameter was exceeded. If, notwithstanding reasonable efforts by Carlton to meet this deadline, governmental agency delays, vendor, contractor or other issues delay installation of the catch basins despite Carlton's best efforts to fulfill the obligation, Carlton shall give written or oral notice to CCAT within 10 business days of when Carlton first knows of the event that might cause the delay. Carlton will propose an alternative completion date that reflects its best efforts to expeditiously resolve the issue(s) causing the delay, approval of which shall not be unreasonably withheld by CCAT. The catch basins shall be fitted with Kristar FloGard Catch Basin Insert Filters, or equivalent. Carlton shall install a pump in each catch basin where necessary to pump filtered storm water to the storm water discharge location.

b. Subsequent to the first reporting year where the average storm water sampling results from a catch basin discharge installed pursuant to Paragraph 9.a of the AGREEMENT exceed the annual NAL for a particular parameter or if two results exceed the instantaneous maximum NAL, no later than by February 28 of the following storm water year after learning of the exceedance, Carlton shall implement above-ground, advanced treatment, to treat all storm water discharged from the Facility catch basin(s) that exceeded the NAL. If, notwithstanding reasonable efforts by Carlton to meet this deadline, governmental agency delays, vendor, contractor or other issues delay installation of the catch basins despite Carlton's best efforts to fulfill the obligation, Carlton shall give written or oral notice to CCAT within 10 business days of when Carlton first knows of the event that might cause the delay. Carlton will propose an alternative completion date that reflects its best efforts to expeditiously resolve the issue(s) causing the delay, approval of which shall not be unreasonably withheld by CCAT. The treatment shall be sized in accordance with the sizing requirements for flow-through treatment in the 2015 General Permit. Carlton shall install a system manufactured by H2O Stormwater Systems, or equivalent.

c. Within thirty (30) days of implementation of any BMPs mandated by this paragraph, the Facility's Storm Water Pollution Prevention Plan shall be amended to describe the new BMPs.

10. Meet and Confer Regarding Subsequent BMPs. If Carlton is required to implement subsequent BMPs pursuant to Paragraph 9, Carlton shall describe the technical specifications, including models and sizing information, of all new BMPs in a Memorandum submitted to CCAT within ninety (90) days after the end of the given reporting year. Upon receipt of the Memorandum, CCAT may review and comment on any identified or omitted additional measures. If requested by CCAT within thirty (30) days of receipt of such Memorandum, CCAT and Carlton shall meet and confer to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the NALs. This meet and confer process may include a site inspection to be conducted within sixty (60) days of the receipt of the Memorandum. If within twenty-one (21) days of the SETTLING PARTIES meeting and conferring, the SETTLING

PARTIES do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 24 and 25 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CCAT may bring a motion before the District Court consistent with Paragraphs 24 and 25 below. If CCAT does not request a meet and confer process regarding the Memorandum within the thirty (30) day comment period provided for in this paragraph, CCAT shall waive any right to object to such proposed BMPs pursuant to this AGREEMENT.

11. Any concurrence or failure to object by CCAT with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by Carlton shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water discharges into compliance with applicable water quality criteria or the BAT/BCT requirements set forth in the General Permit and/or the 2015 General Permit.

12. In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, Carlton shall permit representatives of CCAT to perform one (1) additional site visit to the Facility per year during normal daylight business hours during the term of this AGREEMENT, provided that CCAT provides Carlton via e-mail with at least one week prior notice and coordinates the site visit for a date and time that will cause minimal disruption to the Facility's operations.

13. Provision of Documents and Reports. During the life of this AGREEMENT, Carlton shall provide CCAT with a copy of all documents submitted to the Regional Board or the State Water Resources Control Board ("State Board") concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CCAT contemporaneously with submission to such agency. Within fourteen business (14) days of a written request (via e-mail or regular mail) by CCAT, Carlton also shall provide CCAT a copy of all documents referenced in this AGREEMENT from the year prior to the request, including but not limited to logs, photographs, or analyses.

14. Amendment of Storm Water Pollution Prevention Plan ("SWPPP"). Within sixty (60) days after the District Court's entry of the Order, Carlton shall amend the Facility's SWPPP to incorporate all changes, improvements, sample log forms, and best management practices set forth in or resulting from this AGREEMENT. Carlton shall ensure that all maps, tables, and text comply with the requirements of the General Permit, and when applicable, the 2015 General Permit. Carlton shall ensure that the SWPPP describes all structural and non-structural BMPs and details the measures to be installed. A copy of the amended SWPPP shall be provided to CCAT within thirty (30) days of completion.

15. Mitigation Payment. In recognition of the good faith efforts by Carlton to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by Carlton of any penalties, which have been disputed but may have been assessed in this action if it had been adjudicated adverse to Carlton, the SETTLING PARTIES agree that Carlton will pay the sum of seventy-five thousand (\$75,000) to As You Sow for the sole purpose of providing grants to environmentally beneficial projects relating to water quality improvements in the Los Angeles River Watershed. Payment shall be provided to As You Sow as follows: As You Sow, 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612, Attn: Andrew Behar. Payment shall be made by Carlton to As You Sow within forty-five (45) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Carlton shall copy CCAT with any correspondence and a copy of the check sent to As You Sow. As You Sow shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by As You Sow, setting forth the recipient and purpose of the funds.

16. Fees, Costs, and Expenses. As reimbursement for CCAT's investigative, expert and attorneys' fees and costs, Carlton shall pay CCAT the sum of thirty-three thousand dollars (\$33,000). Payment shall be made by Carlton within forty-five (45) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by Carlton to CCAT shall be made in the form of a single check payable to "Lozeau Drury LLP," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CCAT that have or could have been claimed in connection with CCAT's claims, up to and including the District Court's entry of the Order.

17. Compliance Oversight Costs. As reimbursement for CCAT's future fees and costs that will be incurred in order for CCAT to monitor Carlton's compliance with this AGREEMENT and to effectively meet and confer and evaluate storm water monitoring results for the Facility, Carlton agrees to reimburse CCAT for its reasonable fees and costs incurred in overseeing the implementation of this AGREEMENT up to but not exceeding five thousand (\$5,000) per wet season (2014-2015) or reporting year (2015-2016 and 2016-2017). Fees and costs reimbursable pursuant to this paragraph may include, but are not limited to, those incurred by CCAT or its counsel to conduct site inspections, review water quality sampling reports, review annual reports, discussion with representatives of Carlton concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation, and water quality sampling. No later than 30 calendar days after the end of each wet season or reporting year covered by this AGREEMENT, CCAT shall provide an invoice containing an itemized description for any fees and costs incurred in overseeing the implementation of this AGREEMENT during the prior Stormwater Permit reporting year. Up to three annual payments (one addressing any monitoring associated with the 2014-2015 wet season, one addressing monitoring associated with the 2015-2016 reporting year, and one addressing monitoring associated with the 2016-2017 reporting year) shall be made payable to "Lozeau Drury LLP" within ninety (90) days of receipt of an invoice from CCAT that contains an itemized description of fees and costs incurred by CCAT to monitor implementation of the AGREEMENT during the previous twelve (12) months.

18. Review by Federal Agencies. CCAT shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts and the confirming correspondence of DOJ. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CCAT and Carlton agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CCAT and Carlton are unable to resolve any issue(s) raised by the Agencies in their comments, CCAT and Carlton agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the

issue(s). If the SETTLING PARTIES cannot resolve the issue(s) through a settlement conference, this AGREEMENT shall be null and void. The date of (a) the Agencies' unconditioned approval of this AGREEMENT, (b) the expiration of the Agencies' review period, or (c) the SETTLING PARTIES' resolution of all issues raised by the Agencies, whichever is earliest, shall be defined as the "Agency Approval Date."

NO ADMISSION OR FINDING

19. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT nor compliance with this AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

20. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors, members, shareholders, and agents from any and all claims and demands of any kind, nature, or description whatsoever, known and unknown, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which it may presently have, or which may later accrue or be acquired by it, arising from the Complaint or Notice Letters, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in the Complaint or Notice Letters, for the alleged failure of Defendant to comply with the Clean Water Act at the Facility, up to and including the Termination Date of this AGREEMENT, as defined in Paragraph 23.

21. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint at the Facility up to and including the Termination Date of this AGREEMENT.

22. For the period beginning on the Effective Date and ending on the Termination Date, neither CCAT, its officers, executive staff, members of its Steering Committee will not file or support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against or relating to the Facility that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean Water Act, the General Permit, or the 2015 General Permit.

TERMINATION DATE OF AGREEMENT

23. Unless an extension is agreed to in writing by the SETTLING PARTIES, this AGREEMENT shall terminate on December 15, 2017 (the "Termination Date"), or through the conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by this AGREEMENT.

DISPUTE RESOLUTION PROCEDURES

24. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer in good faith to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the

dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the District Court.

25. In resolving any dispute arising from this AGREEMENT, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

GENERAL PROVISIONS

26. Impossibility of Performance. Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

27. Construction. The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, the 2015 General Permit, and the Clean Water Act or specifically herein.

28. Choice of Law. This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

29. Severability. In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

30. Correspondence. All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to CCAT:	<u>Jane Williams,</u> <u>Executive Director</u> <u>California Communities Against</u> <u>Toxics</u> <u>Rosamond, CA 93560</u> <u>P.O. Box 845</u> <u>(661) 510-3412</u> <u>dcapjane@aol.com</u>	Copy to:	<u>Michael R. Lozeau</u> <u>Douglas J. Chermak</u> <u>Lozeau Drury LLP</u> <u>410 12th Street, Suite 250</u> <u>Oakland, CA 94607</u> <u>(510) 836-4200</u> <u>michael@lozeaudrury.com</u> <u>doug@lozeaudrury.com</u>
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If to CARLTON:	<u>Matthew Oldenkamp</u> <u>General Manager</u> <u>Carlton Forge Works</u> <u>7743 East Adams St.</u> <u>Paramount, CA 90723</u> <u>(562) 633-1131</u> <u>moldenkamp@cfworks.com</u>	Copy to:	<u>Thomas R. Wood</u> <u>Stoel Rives LLP</u> <u>900 SW Fifth Ave, Suite 2600</u> <u>Portland, OR 97204-1268</u> <u>(503) 294-9396</u> <u>trwood@stoel.com</u>
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Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

31. Counterparts. This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

32. Assignment. Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall

inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

33. Modification of the Agreement. This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

34. Full Settlement. This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

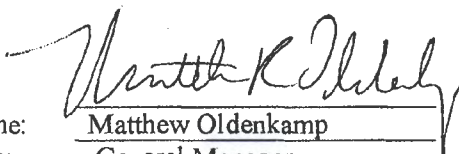
35. Integration Clause. This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements, covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

36. Authority. The undersigned representatives for CCAT and Carlton each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

CARLTON FORGE WORKS

**CALIFORNIA COMMUNITIES
AGAINST TOXICS**

By: 
Name: Matthew Oldenkamp
Title: General Manager
Date: MARCH 10, 2015

By: _____
Name: Jane Williams
Title: Executive Director
Date: _____

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33. Modification of the Agreement. This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

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The SETTLING PARTIES hereby enter into this AGREEMENT.

CARLTON FORGE WORKS

**CALIFORNIA COMMUNITIES
AGAINST TOXICS**

By: _____
Name: Matthew Oldenkamp
Title: General Manager
Date: _____

By: Jane Williams
Name: Jane Williams
Title: Executive Director
Date: 5-14-15

APPROVED AS TO FORM:

For Defendant

For: Plaintiff

CARLTON FORGE WORKS

LOZEAU DRURY LLP

By: _____
Name: Melissa A. Jones, Esq.
Date: _____

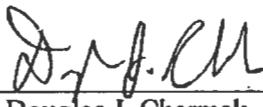
By: 
Name: Douglas J. Chermak, Esq.
Date: 16 March 2015

EXHIBIT B

Michael R. Lozeau (State Bar No. 142893)
Richard T. Drury (State Bar No. 163559)
Douglas J. Chermak (State Bar No. 233382)
LOZEAU DRURY LLP
410 12th Street, Suite 250
Oakland, CA 94607
Tel: (510) 836-4200
Fax: (510) 836-4205 (fax)
E-mail: michael@lozeaudrury.com
richard@lozeaudrury.com
doug@lozeaudrury.com

Attorneys for Plaintiff
CALIFORNIA COMMUNITIES
AGAINST TOXICS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CALIFORNIA COMMUNITIES
AGAINST TOXICS, an
unincorporated non-profit association,

Plaintiff,

vs.

CARLTON FORGE WORKS, a
corporation,

Defendant.

Case No. 2:14-cv-7659

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

CALIFORNIA COMMUNITIES AGAINST TOXICS ("CCAT"), a California
non-profit association, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions

1 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean
2 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties
3 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
4 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
5 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
6 (power to issue declaratory relief in case of actual controversy and further necessary
7 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
8 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

11
12 2. On July 15, 2014, Plaintiff provided notice of Defendant’s violations of
13 the Act, and of its intention to file suit against Defendant, to the Administrator of the
14 United States Environmental Protection Agency (“EPA”); the Administrator of EPA
15 Region IX; the Executive Director of the State Water Resources Control Board (“State
16 Board”); the Executive Officer of the California Regional Water Quality Control
17 Board, Los Angeles Region (“Regional Board”); and to Defendant, as required by the
18 Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CCAT’s notice letter is
19 attached as Exhibit A, and is incorporated by reference.

22
23 3. More than sixty days have passed since notice was served on Defendant
24 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
25 alleges, that neither the EPA nor the State of California has commenced or is
26 diligently prosecuting a court action to redress the violations alleged in this complaint.
27
28

1 This action's claim for civil penalties is not barred by any prior administrative penalty
2 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

3 4. Venue is proper in the Central District of California pursuant to Section
4 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
5 located within this judicial district.
6

7 **II. INTRODUCTION**
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9 5. This complaint seeks relief for Defendant's discharges of polluted storm
10 water and non-storm water pollutants from Defendant's industrial facility located at
11 7743 Adams Street in Paramount, California ("Facility") in violation of the Act and
12 National Pollutant Discharge Elimination System ("NPDES") Permit No.
13 CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-
14 DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order
15 No. 97-03-DWQ (hereinafter the "Permit" or "General Permit"). Defendant's
16 violations of the discharge, treatment technology, monitoring requirements, and other
17 procedural and substantive requirements of the Permit and the Act are ongoing and
18 continuous.
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23 **III. PARTIES**

24 6. Plaintiff CALIFORNIA COMMUNITIES AGAINST TOXICS
25 ("CCAT") is an unincorporated non-profit association under the laws of the State of
26 California with its main office in Rosamond, California. CCAT has members who
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1 live, recreate and work in and around waters in the vicinity of Defendant's Facility.
2 CCAT is dedicated to the preservation, protection, and defense of the environment,
3 particularly with respect to areas and waters near urban industrial communities. To
4 further these goals, CCAT actively seeks federal and state agency implementation of
5 the Act and other laws and, where necessary, directly initiates enforcement actions on
6 behalf of itself and its members. CCAT brings this action on behalf of its members.
7
8 CCAT's interest in reducing Defendant's discharges of pollutants into Los Angeles
9 County's municipal storm drain system and the Los Angeles River and its tributaries
10 and requiring Defendant to comply with the requirements of the General Permit are
11 germane to its purposes. Litigation of the claims asserted and relief requested in this
12 Complaint does not require the participation in this lawsuit of individual members of
13 CCAT.
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17 7. Members of CCAT reside in and around the Los Angeles River and
18 enjoy using the Los Angeles River for recreation and other activities. One or more
19 members of CCAT use and enjoy the waters into which Defendant has caused, are
20 causing, and will continue to cause, pollutants to be discharged. One or more
21 members of CCAT use those areas to recreate and view wildlife, among other things.
22 Defendant's discharges of pollutants threaten or impair each of those uses or
23 contribute to such threats and impairments. Thus, the interests of one or more
24 members of CCAT have been, are being, and will continue to be adversely affected by
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1 Defendant's failure to comply with the Clean Water Act and the Permit. The relief
2 sought herein will redress the harms to Plaintiff caused by Defendant's activities.

3 8. Continuing commission of the acts and omissions alleged above will
4 irreparably harm Plaintiff and one or more of its members, for which harm they have no
5 plain, speedy or adequate remedy at law.
6

7 9. Defendant CARLTON FORGE WORKS ("Carlton") is a corporation
8 that operates an industrial facility in Paramount, California.
9

10 **IV. STATUTORY BACKGROUND**
11

12 10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
13 any pollutant into waters of the United States, unless such discharge is in compliance
14 with various enumerated sections of the Act. Among other things, Section 301(a)
15 prohibits discharges not authorized by, or in violation of, the terms of an NPDES
16 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
17

18 11. Section 402(p) of the Act establishes a framework for regulating
19 municipal and industrial storm water discharges under the NPDES program. 33
20 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
21 Section 402(p) to regulate industrial storm water discharges through individual
22 permits issued to dischargers or through the issuance of a single, statewide general
23 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).
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27 12. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
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1 of the U.S. EPA has authorized California's State Board to issue NPDES permits
2 including general NPDES permits in California.

3 13. The State Board elected to issue a statewide general permit for industrial
4 storm water discharges. The State Board issued the General Permit on or about
5 November 19, 1991, modified the General Permit on or about September 17, 1992,
6 and reissued the General Permit on or about April 17, 1997, pursuant to Section
7 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p). On April 1, 2014, the State
8 Board reissued the General Permit. State Board Order 2014-0057-DWQ. The
9 reissued version of the General Permit does not go into effect until July 1, 2015. Until
10 that time, the April 17, 1997 General Permit remains in full force and effect.s
11

12 14. In order to discharge storm water lawfully in California, industrial
13 dischargers must comply with the terms of the General Permit or have obtained and
14 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).
15

16 15. The General Permit contains several prohibitions. Effluent Limitation
17 B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their
18 storm water discharges through implementation of the Best Available Technology
19 Economically Achievable ("BAT") for toxic and nonconventional pollutants and the
20 Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.
21 BAT and BCT include both nonstructural and structural measures. General Permit,
22 Section A(8). Discharge Prohibition A(2) of the General Permit prohibits storm water
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1 discharges and authorized non-storm water discharges that cause or threaten to cause
2 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the
3 General Permit prohibits storm water discharges to any surface or ground water that
4 adversely impact human health or the environment. Receiving Water Limitation C(2)
5 of the General Permit prohibits storm water discharges that cause or contribute to an
6 exceedance of any applicable water quality standards contained in Statewide Water
7 Quality Control Plan or the applicable Regional Board's Basin Plan.
8

10 16. In addition to absolute prohibitions, the General Permit contains a variety
11 of substantive and procedural requirements that dischargers must meet. Facilities
12 discharging, or having the potential to discharge, storm water associated with
13 industrial activity that have not obtained an individual NPDES permit must apply for
14 coverage under the State's General Permit by filing a Notice of Intent to Comply
15 ("NOI"). The General Permit requires existing dischargers to have filed their NOIs
16 before March 30, 1992.
17

20 17. Dischargers must develop and implement a Storm Water Pollution
21 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities
22 and measures that comply with the BAT and BCT standards. The General Permit
23 requires that an initial SWPPP have been developed and implemented before October
24 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources
25 of pollutants associated with industrial activities that may affect the quality of storm
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1 and non-storm water discharges from the facility and identify and implement site-
2 specific best management practices ("BMPs") to reduce or prevent pollutants
3 associated with industrial activities in storm water and authorized non-storm water
4 discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT
5 (Section B(3)). The SWPPP must include: a description of individuals and their
6 responsibilities for developing and implementing the SWPPP (Section A(3)); a site
7 map showing the facility boundaries, storm water drainage areas with flow pattern and
8 nearby water bodies, the location of the storm water collection, conveyance and
9 discharge system, structural control measures, impervious areas, areas of actual and
10 potential pollutant contact, and areas of industrial activity (Section A(4)); a list of
11 significant materials handled and stored at the site (Section A(5)); a description of
12 potential pollutant sources including industrial processes, material handling and
13 storage areas, dust and particulate generating activities, and a description of
14 significant spills and leaks, a list of all non-storm water discharges and their sources,
15 and a description of locations where soil erosion may occur (Section A(6)). The
16 SWPPP must include an assessment of potential pollutant sources at the Facility and a
17 description of the BMPs to be implemented at the Facility that will reduce or prevent
18 pollutants in storm water discharges and authorized non-storm water discharges,
19 including structural BMPs where non-structural BMPs are not effective (Section A(7),
20 (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
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1 where necessary (Sections A(9), (10)).

2 18. Section C(11)(d) of the General Permit's Standard Provisions requires
3 dischargers to report any noncompliance to the Regional Board. *See also* Section
4 E(6). Section A(9) of the General Permit requires an annual evaluation of storm water
5 controls including the preparation of an evaluation report and implementation of any
6 additional measures in the SWPPP to respond to the monitoring results and other
7 inspection activities.
8

10 19. The General Permit requires dischargers commencing industrial activities
11 before October 1, 1992 to develop and implement an adequate written monitoring and
12 reporting program no later than October 1, 1992. Existing facilities covered under the
13 General Permit must implement all necessary revisions to their monitoring programs
14 no later than August 1, 1997.
15

17 20. As part of their monitoring program, dischargers must identify all storm
18 water discharge locations that produce a significant storm water discharge, evaluate
19 the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
20 pollution control measures set out in the SWPPP are adequate and properly
21 implemented. Dischargers must conduct visual observations of these discharge
22 locations for at least one storm per month during the wet season (October through
23 May) and record their findings in their Annual Report. Dischargers must also collect
24 and analyze storm water samples from at least two storms per year. Section B(5)(a) of
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1 the General Permit requires that dischargers “shall collect storm water samples during
2 the first hour of discharge from (1) the first storm event of the wet season, and (2) at
3 least one other storm event in the wet season. All storm water discharge locations
4 shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and analyze
5 during the wet season for basic parameters, such as pH, total suspended solids,
6 electrical conductance, and total organic content or oil & grease, certain industry-
7 specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic
8 chemicals and other pollutants likely to be in the storm water discharged from the
9 facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent
10 on a facility’s standard industrial classification (“SIC”) code. Section B(7)(a)
11 indicates that the visual observations and samples must represent the “quality and
12 quantity of the facility’s storm water discharges from the storm event.” Section
13 B(7)(c) requires that “if visual observation and sample collection locations are
14 difficult to observe or sample...facility operators shall identify and collect samples
15 from other locations that represent the quality and quantity of the facility’s storm
16 water discharges from the storm event.”

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23 21. The General Permit requires that facility operators “investigate the
24 facility to identify all non-storm water discharges and their sources. As part of this
25 investigation, all drains (inlets and outlets) shall be evaluated to identify whether they
26 connect to the storm drain system. All non-storm water discharges shall be described.
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1 This shall include the source, quantity, frequency, and characteristics of the non-storm
2 water discharges and associated drainage area.” Section A(6)(a)(v). The General
3 Permit authorizes certain non-storm water discharges providing that the non-storm
4 water discharges are in compliance with Regional Board requirements; that the non-
5 storm water discharges are in compliance with local agency ordinances and/or
6 requirements; that best management practices (“BMPs”) are included in the Storm
7 Water Pollution Prevention Plan to (1) prevent or reduce the contact of non-storm
8 water discharges with significant materials or equipment and (2) minimize, to the
9 extent practicable, the flow or volume of non-storm water discharges; that the non-
10 storm water discharges do not contain significant quantities of pollutants; and that the
11 monitoring program includes quarterly visual observations of each non-storm water
12 discharge and its sources to ensure that BMPs are being implemented and are
13 effective (Special Conditions D). Section B(3) of the General Permit requires
14 dischargers to conduct visual observations of all drainage areas for the presence of
15 non-storm water discharges, to observe the non-storm water discharges, and maintain
16 records of such observations.

22
23 22. Section B(14) of the General Permit requires dischargers to submit an
24 annual report by July 1 of each year to the executive officer of the relevant Regional
25 Board. The annual report must be signed and certified by an appropriate corporate
26 officer. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires
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1 the discharger to include in their annual report an evaluation of their storm water
2 controls, including certifying compliance with the General Permit. *See also* Sections
3 C(9), C(10) and B(14).
4

5 23. The General Permit does not provide for any mixing zones by
6 dischargers. The General Permit does not provide for any dilution credits to be
7 applied by dischargers.
8

9 24. The Regional Board has established water quality standards for the Los
10 Angeles River Watershed in the "Water Quality Control Plan – Los Angeles Region:
11 Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties",
12 generally referred to as the Basin Plan.
13

14 25. The Basin Plan includes a narrative toxicity standard which states that
15 "[a]ll waters shall be maintained free of toxic substances in concentrations that are
16 toxic to, or that produce detrimental physiological responses in, human, plant, animal,
17 or aquatic life."
18

19 26. The Basin Plan includes a narrative oil and grease standard which states
20 that "[w]aters shall not contain oils, greases, waxes, or other materials in
21 concentrations that result in a visible film or coating on the surface of the water or on
22 objects in the water, that cause nuisance, or that otherwise adversely affect beneficial
23 uses."
24

25 27. The Basin Plan provides that "[w]aters shall not contain suspended or
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1 settleable material in concentrations that cause nuisance or adversely affect beneficial
2 uses.”

3 28. The Basin Plan provides that “[t]he pH of bays or estuaries [or inland
4 surface waters] shall not be depressed below 6.5 or raised above 8.5 as a result of
5 waste discharges.”
6

7 29. The Basin Plan provides that “[s]urface waters shall not contain
8 concentrations of chemical constituents in amounts that adversely affect any
9 designated beneficial use.”
10

11 30. The Basin Plan provides that “[w]ater shall not contain floating materials,
12 including solids, liquids, foams, and scum, in concentrations that cause nuisance or
13 adversely affect beneficial uses.”
14

15 31. The Basin Plan provides that “[s]urface waters shall not contain
16 concentrations of chemical constituents in amounts that adversely affect any
17 designated beneficial use. Water designated for use as Domestic or Municipal Supply
18 (MUN) shall not contain concentrations of chemical constituents in excess of the
19 limits specified in the following provisions of Title 22 of the California Code of
20 Regulations which are incorporated by reference into this plan: Table 64431-A of
21 Section 64431 (Inorganic Chemicals)...” The Basin Plan provides a Maximum
22 Contaminant Level (“MCL”) for aluminum of 1 mg/L.
23

24 32. The EPA 303(d) List of Water Quality Limited Segments lists Reach 1 of
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1 the Los Angeles River, the next segment downstream from where the Facility's storm
2 water discharges – as impaired for zinc. *See* [http://www.waterboards.ca.gov/
3 centralvalley/water_issues/tmdl/impaired_waters_list/2008_2010_usepa_303dlist/200
4 82010_usepa_aprvd_303dlist.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/impaired_waters_list/2008_2010_usepa_303dlist/20082010_usepa_aprvd_303dlist.pdf). As a result, the Basin Plan contains additional
5 water quality standards for the Los Angeles River in an amendment setting forth Total
6 Maximum Daily Loads (“TMDLs”) for the Los Angeles River. *See*
7 http://63.199.216.6/larwqcb_new/bpa/docs/R10-003/R10-003_RB_BPA.pdf. For
8 General Industrial Storm Water permittees, the Basin Plan sets forth interim wet-
9 weather concentration-based waste load allocations (“WLAs”) that have been
10 enforceable conditions for discharges since January 11, 2011. There is a WLA for
11 zinc of 0.117 mg/L.

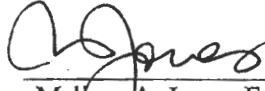
12
13 33. The EPA has adopted a freshwater numeric water quality standard for
14 zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712
15 (May 18, 2000) (California Toxics Rule).

16
17 34. EPA has established Parameter Benchmark Values as guidelines for
18 determining whether a facility discharging industrial storm water has implemented the
19 requisite BAT and BCT. EPA has established Parameter Benchmark Values for the
20 following parameters, among others: pH – 6.0 - 9.0 units; total suspended solids
21 (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, chemical oxygen demand
22 (“COD”) – 120 mg/L, nitrate plus nitrite as nitrogen (“N+N”) – 0.68 mg/L, zinc –
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APPROVED AS TO FORM:

For Defendant

CARLTON FORGE WORKS

By: 
Name: Melissa A. Jones, Esq.
Date: 3/16/2015

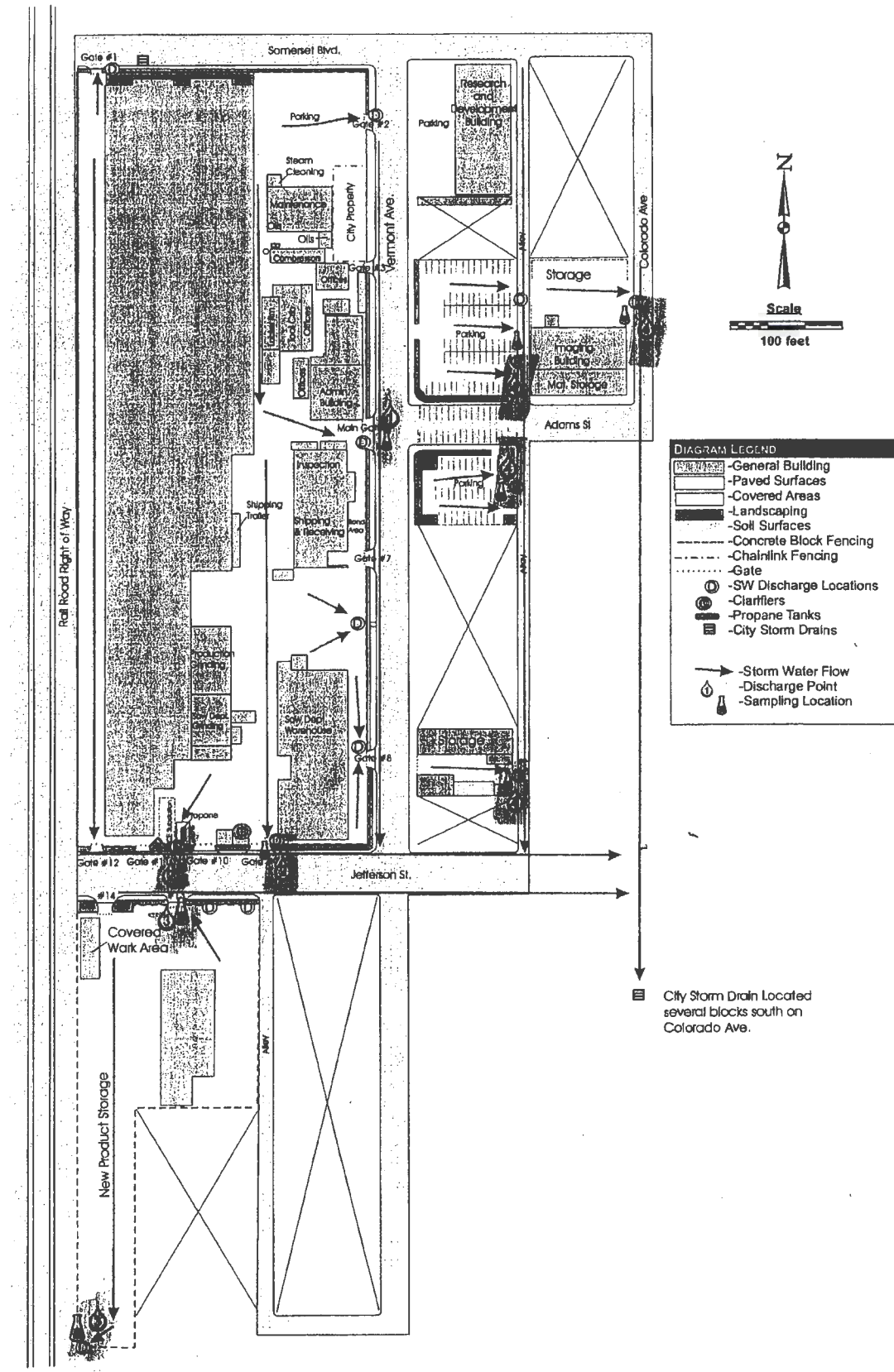
For: Plaintiff

LOZEAU DRURY LLP

By: _____
Name: Douglas J. Chermak, Esq.
Date: _____

Carlton Forge Works
7743 East Adams
Paramount, CA 90723

EXHIBIT A



Madison

EXHIBIT B